

Testimony before the House Committee on Interstate and Foreign  
Commerce  
April 23, 1969

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THE TOBACCO INSTITUTE, INC.  
1735 K STREET, NORTHWEST  
WASHINGTON, D. C. 20006

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WILLIAM KLOPFER, JR.  
Vice President - Public Relations

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SPECIAL INFORMATION MEMORANDUM

Summary of the seventh day of hearings on cigarette legislation  
before the House Committee on Interstate and Foreign Commerce.

Joseph F. Cullman, III, chairman of Philip Morris, Inc., and of the Tobacco Institute's executive committee, stated the industry's position. He voiced the nation's cigarette makers support for Congressional bills to extend the smoking and health law enacted four years ago.

Reenactment of portions of the law set to expire June 30, Cullman said, "is essential to prevent a chaotic situation which may otherwise engulf the entire tobacco industry and which could have far-reaching repercussions for the national economy."

He said his industry is "profoundly conscious of questions raised concerning smoking and health," and had undertaken, ten years before the 1964 Surgeon General's report on smoking, a health research program to which it has so far committed more than \$31 million.

He stated that "eminent scientists" will appear before the committee in the next few days to testify that "there has been no significant change in the state of scientific knowledge with respect to smoking and health during the past four years."

Reminding the committee that federal and state agencies are again prepared to undertake "piecemeal" cigarette regulation, Cullman said Congress should retain its jurisdiction because "a great diversity of interests is involved." In addition to millions of persons from farmers to retailers whose livelihood depends on tobacco, he said, more than \$4 billion annually in tax revenues

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as well as all the nation's mass media would suffer if "unwarranted" regulations are imposed.

Cullman called "punitive in spirit" a principal anti-smoking proposal to require a health warning in all cigarette advertising, declaring "No business man will spend his company's money for a self-defeating purpose."

"We hope," Cullman said, "that governmental and private health research agencies will not only continue--but that they will also accelerate--their efforts to learn the truth concerning the smoking and health issue and to fill the many gaps in knowledge which presently exist."

He said, "we believe that the public interest in this area will best be served by disinterested, objective inquiry by qualified scientists, and that it is not served by the dissemination of propaganda."

Rep. Ottinger (D-N.Y.) introduced Cullman to the Committee as a personal friend, a constituent, a civic leader and a trustee of Montefiore Hospital in New York City. He also stressed that the tobacco industry had done a great deal of research to get the facts with which to counter the discrimination that was being waged against it.

Congressman MacDonald asked for the rationale the industry used in opposing the tar and nicotine statement. Cullman said there is no scientific basis that a greater or lesser amount of tar and nicotine is of significance. He said there are some 2,000 components in cigarette smoke, and that the Surgeon General had not been able to identify a single one as causing any disease. Thus, "tar" and nicotine listings, he said, would not provide the public with meaningful information.

In answer to Congressman Watson (R-S.C.) Cullman pointed out that a milligram, the unit used to measure "tar" and nicotine is 1/26,000 of an ounce; that the listing gives average and approximate yields which do not apply to the cigarette a person may be smoking at any particular time.

John Moss (D-Calif.), who has an anti-cigarette bill pending before Congress, asked if the variation in "tar" and nicotine could be due to residue of insecticides and pesticides used in tobacco farming. Cullman replied that he did not know but added that tobacco "is very

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thoroughly processed and that manufacturers conduct continuing investigations to remove impurities.

Moss further suggested that the 1965 cigarette labeling and advertising act, by requiring a warning statement on the pack, relieved cigarette companies of liability in suits filed against them by cancer victims. Cullman denied this was any part of the industry's objective, nor even a fringe benefit, resulting from the law. In face of continuing thrusts along this line from Moss, Cullman reminded the committee that the tobacco industry opposed the warning statement during the 1965 hearings.

Congressman Watson rebutted Moss and pointed out that the 1965 law did not preempt liability suits in common-law, nor did the act give the tobacco companies any advantages, he said. Congressman Watson also interjected that there is no restriction in the use of pesticides in the agriculture of any non-edible product. He asked Cullman if he knew of this. Congressman Moss, in the Chair at the time, cut off Cullman's answer.

In answer to Congressman Broyhill (R-N.C.), Cullman stated he objected to the FCC advertising ban because it singles out a specific product for unusual discrimination. He opposed the FCC health warning in advertising because it is tantamount to an advertising ban. It asks manufacturers to disparage their product, and he doubts that this would be a wise use of corporate funds. Except for the Vietnam war, the presidential election, and civil disorder, he stated no other subject has been so widely publicized as the alleged health hazard of cigarette smoking.

Congressman Dingle (D-Mich.) continued Moss's line of questioning, trying to get Cullman to admit the industry gained a liability advantage from the warning statement. But Cullman stood his ground, saying he is not a lawyer and not in a position to judge ex post facto effect of the 1965 Act. He repeated his belief that the present warning statement is sufficient in the light of present knowledge.

Congressman Watson intervened, asking: "If Mr. Moss and Mr. Dingle are so apprehensive about the individual's right to sue with the present warning, would not a stronger label statement be even more preemptive on suits?" Congressman Moss said he would present documentation of the legal advantages gained by the industry under the 1965 Act.

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To Congressman Rogers' (R-Fla.) questions about the industry self-regulation efforts, Cullman expanded on the limitations required under the cigarette advertising code. In view of the public's knowledge of the warning, he said: "I don't see what further steps the industry could take and still continue on the competitive scene; nothing we could do would satisfy our opponents." The industry had studied voluntarily limiting advertising to hours when young people were not watching TV. But we found, that they often stay up later than old people, he said, noting that FCC chairman Hyde also testified that restricting advertising to certain hours of the day was ineffective.

Congressman Brozman (R-Colo.) made it clear that the 1965 Act does not prevent the FTC or FCC from pursuing their regular statutory activities. Cullman pointed out that the FTC had made no formal complaints against the tobacco industry for deceptive practices; evidently, he said, the FTC has found no deception.

Cullman explained the nature of cigarette advertising, and showed it was essentially a competitive activity devoted to brand switching. Greater forces at work in society than advertising are causing a person to begin smoking; he said, one of which was the satisfaction of a certain human need that exists worldwide. An advertising ban would be anti-competitive, he said, preventing small companies from introducing new products, and making it difficult to introduce innovations.

He explained to Congressman VanDeerlin (D-Calif.) that the net result of an advertising ban in Great Britain was an increase in cigarette consumption. Intense efforts to discourage smoking had failed to convince people or to change their behavior.

Cullman declined to suggest any "acceptable" changes in the law. He stood by his statement supporting an extension of the present law and reiterated his view that an advertising warning most likely would result in the end of advertising.

Congressman Pickle (D-Texas) tried a few new label possibilities. The first: "Warning--Heavy cigarette smoking may cause serious injury to your health." Cullman said that was better than the FTC language. Pickle next suggested: "Warning--Heavy cigarette smoking may cause serious injury to your health, including death according to the Surgeon General." Cullman said it would be

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difficult to determine what "heavy smoking" meant and that no one would like to put "death" on his label. Pickle then suggested a warning statement for newspaper advertising that read: "This advertisement is subject to government warnings (U. S. Surgeon General) that heavy cigarette smoking probably will cause serious injury to your health." The statement could also be flashed on the TV screen, he said. Cullman believed the FTC would insist on putting it in the audio portion, leaving no time for the advertising copy itself.

Congressman Ottinger (D-N.Y.), called the statement "excellent." He complimented the industry for being well aware of the health problem and the need for further research. Cullman hoped that further research will bring out the facts, adding that a great many hazardous substances are taken into our system, but so far as he knows, none are required to advertise an alleged health hazard. Ottinger said the government has a duty to inform people, but the FCC rule went far beyond anything directed at any other industry. If cigarettes are in effect poisonous, he said, the government should prohibit their use.

Congressman Eckhardt (D-Texas) saw no reason why states should be preempted. Just because Congress doesn't know the answers, he said, why should we tell states not to act? Cullman observed that if Congress does not know, the states cannot know. Since national advertising and distribution are involved, he said, individual state regulation would create chaos. The industry prefers to put its faith in the United States Congress. In that case, Eckhardt said, Congress should look further into this matter. "That's exactly what we want," replied Cullman.

Congressman Freyer (D-N.C.), stated that the test of a warning statement should be awareness, not reduction in consumption. He doubted whether Congress had the right to go beyond informing people.

Congressman Watson put on the record the failure of the Council for Tobacco Research and the AMA-Education and Research Foundation to find a causal connection between smoking and disease. He read the AMA-ERF statement on the scientific existing evidence, and wished Congressman Moss was present to hear it.

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Congressman Dingle cited some recent magazine ads for Montclair and Lark which placed heavy emphasis on "tar" and nicotine. He also referred to virile Marlboro cowhand astride his horse.

But, Cullman interjected, you will notice he's also an old cowhand.

At the conclusion, Cullman thanked the Chairman and the committee. It was his first exposure, he said, in observing the democratic process at work. He was very impressed by the experience and particularly welcomed the opportunity to tell the industry side. In the cigarette controversy, he said, it doesn't happen often.

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